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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/037,581	01/04/2002	Ru-Shi Liu	U 013820-1	6510

7590 05/01/2003
Ladas & Parry
26 West 61st Street
New York, NY 10023

EXAMINER

KRISHNAN, SUMATI

ART UNIT	PAPER NUMBER
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2875

DATE MAILED: 05/01/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/037,581

Applicant(s)

LIU ET AL.

Examiner

Sumati Krishnan

Art Unit

2875

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE ____ MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-5 is/are pending in the application.
- 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 1-5 is/are rejected.
- 7) ☐ Claim(s) ____ is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on ____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on ____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. ____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s) ____.
- 4) ☐ Interview Summary (PTO-413) Paper No(s). ____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____

DETAILED ACTION

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-5 are rejected under 35 U.S.C. 103(a) as being unpatentable over Matsubara et al (6509651) in view of Pinnow et al (US 3699478).

Matsubara discloses a pink light emitting device with high brightness comprising a light emitting diode as a luminescent element and a fluorescent body comprising yttrium aluminum garnet fluorescent powders wherein said light emitting element emits a purple to blue light with a wavelength ranging from 400 nm-450 nm. Matsubara does not explicitly disclose the formula claimed in claim 1. However, Pinnow discloses a white light emitting device comprising a phosphor composition having the formula of claims 1-3. See Pinnow column 4 line 10. Pinnow discloses that this formula together with the specified ranges, represents the minimum concentration resulting in a readily discernible reemission image, and the maximum concentration is occasioned by the fact that further increase results in little improvement. Pinnow discloses that the disclosed composition is based largely on economic considerations. Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to have used Pinnow's phosphor composition in the invention of Matsubara in order to maximize efficiency and minimize cost.

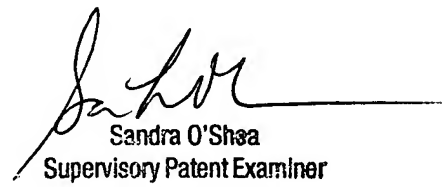
Regarding claim 4, Matsubara discloses the fluorescne powder excited by a purple to blue light to emit an orange yellow to orange light with a wavelength ranging from 575-585 nm, see figure 9.

Regarding claim 5, the Applicant is claiming the product of claim 1 including a process of making the fluorescent powder. Claim 5 is a product-by-process claim. In spite of the fact that a product-by-process claim may recite only process limitations, it is the product and not the recited process that is covered by the claim. Patentability of a claim to a product does not rest merely on the difference in the method by which the product is made. Rather, it is the product itself which must be new and not obvious. As such, no patentable weight has been given to the process recited in claim 5 (see MPEP 2113).

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Sumati Krishnan whose telephone number is 703-305-7906. The examiner can normally be reached on 8:00 am - 4:30 pm..

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Sandra O'Shea can be reached on 703-305-4939. The fax phone numbers for the organization where this application or proceeding is assigned are 703-872-9318 for regular communications and 703-872-9319 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-0956.


Sandra O'Shea
Supervisory Patent Examiner
Technology Center 2800

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SK

April 25, 2003